Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Petition of BellSouth Telecommunications, Inc. For	)	WC Docket No. 03-220
Forbearance Under 47 U.S.C. 160(c)	)	
From Application of Sections 251(c)(3), (4),	)	
And (6) In New-Build, Multi-Premises	)	
Developments	)	

REPLY COMMENTS OF THE VERIZON TELEPHONE COMPANIES

None of the commenters opposing BellSouth's Petition for Forbearance From the Application of Sections 251(c)(3), (4), and (6) in New-Build, Multi-Premises Developments ("Petition") offer a convincing reason why the Commission should not grant BellSouth's Petition and forbear from applying Section 251's unbundling rules to new build Multi-Premises Developments ("MPDs"). In particular, no commenter has rebutted (or could rebut) the demonstration that – either in this proceeding or in ruling on the pending petitions for reconsideration or clarification of the *Triennial Review Order* – the Commission should provide equivalent relief immediately with respect to new *broadband* facilities for MPDs. Unless the Commission makes clear that new broadband facilities built to serve MPDs are free from unbundling obligations, it will undermine its goal of promoting broadband deployment to the mass market. Indeed, such a shortsighted policy could hurt broadband deployment overall. If it is less attractive to deploy fiber to this large segment of the mass market, ILECs will have less incentive to deploy fiber to all other customers as well, since deployment will be less efficient and total revenues from fiber deployment will be reduced. And, such obligations will make fiber deployment more costly and complex, and thus may slow its progress as well as artificially inflate the costs to consumers.

Moreover, while the issue is not presented by BellSouth's Petition here, and is raised instead in the Triennial Review Order reconsideration and in other forbearance proceedings, it is critical that the Commission make clear that there are no unbundling obligations that apply to *broadband* facilities under *any* provision of the Act. As Verizon has explained at length, the Commission should forbear from any stand-alone unbundling obligations for broadband elements to the extent that Section 271 is ultimately construed to contain them.[1] Imposing unbundling obligations on broadband facilities under Section 271 would have the same negative effects on broadband deployment that the Commission rightly concluded would result from an unbundling requirement under Section 251. Such obligations would only add yet another new layer of uncertainty and financial risk that would only add to the cost and delay associated with the need to redesign the network and accompanying systems – costs and delays that would apply only to the Bell companies and not to the cable competitors that currently dominate the broadband market. And, of course, this all applies equally to broadband facilities used to serve customers in MPDs.

BellSouth is correct that competitors are not impaired to begin with when competing for and serving new MPDs. ILECs have no inherent advantage when bidding for contracts or building and installing facilities to new MPDs. In new build situations, both ILECs and CLECs must purchase new equipment, hire skilled labor, negotiate with

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1 *See The Commission Should Forbear From Imposing Any Section 271 Unbundling Obligations On Broadband*, attached to Letter from Susanne A. Guyer to Chairman Powell and Commissioners, CC Docket No. 01-338, (filed Oct. 24, 2003).

developers and apply to local governments for permits and access to rights-of-way. ILECs and CLECs also enjoy the same revenue opportunities from new build situations. Moreover, the market for new build MPDs is highly competitive, and ILECs compete for these contracts not only with CLECs but also with cable companies that offer bundled voice, video, and broadband services to these developments. Qwest Comments at 3; SBC Comments at 3-4. And, in these situations, it is the ILECs that are at a competitive disadvantage since cable companies and CLECs, who are not subject to the debilitating unbundling rules imposed on ILECs, have more flexibility to price their services.[2]

Commenters opposing BellSouth's Petition claim that CLECs cannot compete for or serve MPDs without unbundled access to ILECs' networks. The Commission should reject this argument. The alleged obstacles to serving MPDs these commenters discuss – the expense and risk of building new facilities to new MPDs, the possibility of losing

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[2] Several commenters argue that BellSouth's Petition must be denied because Section 251(c) is not "fully implemented." Allegiance Telecom Comments at 6-10; AT&T Comments at 5-10; MCI Comments at 13-15. In fact, AT&T claims that Section 251 cannot be "fully implemented" until "a practical effect results: namely, when ubiquitous and durable local competition *actually exists* and the incumbents no longer control bottleneck facilities." AT&T Comments at 9 (emphasis in original). At least with respect to the unbundling requirement, the Commission can avoid that issue altogether here by finding that carriers are not impaired in serving new MPDs. More generally, SBC and BellSouth both note that the grant of a Section 271 application removes any hurdle that section 10(d) might pose to the Commission's authority to forbear from applying either Section 251 or Section 271. Petition at 7-8; SBC Comments at 7-8. In any event, AT&T's suggested definition of "fully implemented" is not only contrary to the express language and structure of the Act, but is impossibly vague and could, as a practical matter, prevent the Commission from ever exercising its clearly delineated authority – expressly provided by the statute – to forbear from applying *any* provision of Section 251 or Section 271. Indeed, AT&T's definition of when the Commission may grant forbearance is more demanding than the statutory impairment standard that determines whether an element need be unbundled to begin with. Because there is no conceivable basis for imposing an unbundling obligation where the market is fully competitive, the Commission could never forbear from an unbundling requirement where that standard is satisfied, because unbundling could not be required to begin with. It makes no sense to read the Act to require a higher standard for granting forbearance than for the initial impairment inquiry that determines whether an element should be unbundled in the first place.

"sunk costs" if the customer is lost, the inability to gain access to buildings, trouble negotiating rights-of-way access, obtaining building permits, and overcoming construction moratoriums, *see* Comments of Cbeyond Communications, Focal Communications Corporation, McLeodUSA Telecommunications, Inc., Mpower Communications Corp., TDS Metrocom, LCC – are problems that ILECs suffer to the same degree as CLECs when competing to serve new build MPDs. For example, AT&T and others argue that ILECs have a competitive advantage because they may use existing rights-of-way when building and installing new facilities for MPDs. AT&T Comments at 21-22. ILECs, however, must also secure rights-of-way for additional facilities before building to a new MPD. Verizon as well as other ILECs have often faced the same problems and delays in using municipal rights-of-way as competitive carriers.

Competition for serving MPDs is even more intense for *broadband* services, which will require new builds and construction. In fact, the oppositions to BellSouth's Petition only further underscore the need for the Commission to grant the pending petitions for reconsideration or clarification in the Triennial Review docket to make clear that customers in MPDs will enjoy the full benefits of new fiber deployment. The Commission should clarify that 1) mass-market customers in multiunit premises are part of the mass market and not the enterprise market; and (2) deploying fiber to such buildings qualifies as fiber-to-the-premises if the fiber extends to the basement of the building.[3] For example, in its comments MCI attempts to capitalize on an ambiguity created by footnote 624 of the Triennial Review Order. *Triennial Review Order* ¶ 197

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[3] *See* SureWest Communications Petition for Clarification and Partial Reconsideration, CC Docket Nos. 01-338, 96-98, and 98-147 (filed Oct. 2, 2003); BellSouth Petition for Clarification and/or Partial Reconsideration, CC Docket Nos. 01-338, 96-98, and 98-147 (filed Oct. 2, 2003).

n.624 ("the conclusions we reach for high-capacity loops in the enterprise market apply equally to mass market customers in multiunit premises"). MCI argues that the Commission made a finding in this footnote that mass-market customers in multi-unit premises must be treated as part of the enterprise market for purpose of the fiber unbundling rules. MCI Comments at 6.

As Verizon explained in its comments in this docket, as well as its comments in support of SureWest's and BellSouth's Petitions for Clarification, the ambiguity created by footnote 624 must be clarified. Verizon Comments at 4-6; Verizon Response to Petitions for Reconsideration, CC Docket No. 01-338, at 22 –25 (filed Nov. 6, 2003). The Commission's rationale in footnote 624 for treating customers in multi-unit premises differently from other customers is based entirely on concerns about the ability of competitors to access the inside copper wiring owned by ILECs in such buildings. That concern is fully addressed, however, by the Commission rules that guarantee competitors access to such wiring. Moreover, as Verizon explained in its Comments, it makes no sense to impose *more* unbundling on customers in multi-unit premises than customers in single-unit premises. Such a rule could deny millions of customers the benefits of broadband deployment. *See* Response of Telecommunications Research and Action Center, *et al.* to Petitions for Reconsideration, CC Docket No. 01-338, at 6-7 (filed November 17, 2003) ("Clarifying the rules so that [multiunit premises] are treated as mass market locations (without broadband unbundling requirements) rather than large business locations will go a long way towards speeding up the deployment of broadband to a substantial segment of the nation's underserved population: people with disabilities, seniors, lower income and minority consumers."). Any rules that make it less attractive to deploy fiber to a significant portion of the mass market would reduce the overall revenues that ILECs could expect to earn from deploying fiber, and thus in turn reduce the incentives to deploy fiber to all other customers as well.

CONCLUSION

For these reasons, the Commission should grant BellSouth's Petition.

Respectfully submitted,

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